

UNITED STATES COURT OF APPEALS June 24, 2010

FOR THE TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

HAROLD D. HORNSBY,

Petitioner - Appellant,

v.

No. 10-5054

EDWARD EVANS,

Respondent - Appellee.

ORDER

Before Chief Judge **BRISCOE**, Judge **TACHA**, and Judge **TYMKOVICH**,
Circuit Judges.

This matter is before the court on the appellant's response to the court's April 26, 2010 order to show cause.

In *Hornsby v. Sirmons*, No. 07-5057 (10th Cir., June 28, 2007), this court directed that "any further applications, motions, or other filings by Mr. Hornsby collaterally attacking his convictions in state case Nos. CRF-90-3198 and/or CRF-92-170 will be deemed denied on the thirtieth calendar day after filing unless this court otherwise orders." Further, the court warned Mr. Hornsby that "[i]f [he] persists in filing additional § 2254 petitions, additional motions or applications

for leave to file second or successive § 2254 petitions, or other filings challenging these convictions, we may consider imposing monetary sanctions.” *Id.* In addition, in *Hornsby v. Evans*, No. 08-5178 (10th Cir. May 13, 2009), after discussing Mr. Hornsby’s extensive filing history, the court cautioned him that “[a]nother abusive filing will require us to impose monetary sanctions.”

In the present appeal (opened on April 26, 2010), Mr. Hornsby seeks review of orders issued in Northern District of Oklahoma Case No. 95-CV-940 - a § 2254 proceeding challenging his state court convictions in CRF-90-3198, CRF-92-170, and CRF-90-461.

Based upon its directives in *Hornsby v. Sirmons*, No. 07-5057 (10th Cir. June 28, 2007), and *Hornsby v. Evans*, No. 08-5178 (10th Cir. May 13, 2009), this court issued an order directing Mr. Hornsby to show cause why the filing restrictions imposed by this court in Case No. 07-5057 should not apply and why this appeal should be allowed to proceed. The order also directed Mr. Hornsby to show cause why monetary sanctions should not be imposed. Mr. Hornsby has responded, apparently arguing that he is not attempting to challenge his convictions in CRF-90-3198 or CRF-92-170 and that this court has jurisdiction over this appeal, based upon 28 U.S.C. § 1292 (a), because it involves an interlocutory injunctive order.

Upon consideration of Mr. Hornsby’s response and upon review of its file in this matter, the court concludes that this appeal constitutes yet another attempt

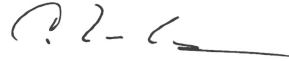
by Mr. Hornsby to present collateral challenges to the convictions referenced by this court in Case No. 07-5057. Accordingly, the court will construe this appeal as an application for leave to file a second or successive § 2254 habeas petition and, pursuant to the court's directives in 07-5057, will deem it DENIED. This denial is not subject to review through rehearing, appeal, or writ of certiorari. *See* 28 U.S.C. § 2244 (b)(3)(E).

This court has previously warned Mr. Hornsby against future repetitive, abusive filings and has cautioned him that such filings may result in the imposition of monetary sanctions. The court sees nothing in his response to the April 26, 2010 show cause order to indicate that such sanctions should not be imposed in the present matter.

Therefore, the court imposes a sanction in the amount of \$250.00, payable to the clerk of this court. Mr. Hornsby may not proceed with any future civil matters filed with this court arising from Northern District of Oklahoma Case No. 95-CV-940, or otherwise involving the state court convictions challenged in that case (the convictions in state court cases no. CRF-90-3198 and/or CRF-92-170 and/or CRF-90-461) unless and until this \$250.00 sanction is paid and Mr. Hornsby provides this court with proof of such payment.

See Christensen v. Ward, 916 F. 2d 1485 (10th Cir. 1990).

Entered for the Court
ELISABETH SHUMAKER, Clerk of Court

A handwritten signature in black ink, appearing to read 'C. Van Coney', with a horizontal line extending to the right.

by:

Christine Van Coney
Counsel to the Clerk